

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHOAN WILLIAM LUKE,

Defendant-Appellant.

UNPUBLISHED

March 21, 2006

No. 258849

Calhoun Circuit Court

LC No. 88-000036-FH

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's order revoking his probation and sentencing him to a term of thirty to one hundred twenty months' imprisonment for his plea-based conviction of breaking and entering with intent to commit a felony or larceny, MCL 750.110.¹ We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Defendant committed his underlying offense in 1987, and pleaded guilty in 1988, receiving a sentence of probation. In 1989, defendant's probation was transferred to Florida. In 1991, a bench warrant was issued from Calhoun County in response to defendant's being convicted of car theft in Florida, and failing to report in Calhoun County. Defendant served terms of prison and probation in Florida, then returned to Michigan, but failed to report to his probation agent. A warrant was issued, and defendant was arrested in 1991. When he failed to appear for his hearing, a bench warrant was issued. In 1995, defendant turned himself in to the authorities, pleaded guilty, and was sentenced to serve six months on a tether. Defendant violated those terms, admitted guilt, waived formal proceedings, and was sentenced to fourteen days in jail with work release. Defendant absconded from work release, and failed to make any further contact with the probation department until his arrest in August 2004. Defendant lived in Indiana for the four years preceding the instant proceedings.

¹ Defendant appeals by right instead of by seeking leave because this case arises from a conviction dating from before the 1994 amendment of Const 1963, art 1, § 20, in accordance with which plea-based convictions no longer engender a constitutional right to appeal. See also MCL 770.3(1)(d).

Defendant accepted his current sentence as part of a plea agreement. In the course of that proceeding, he admitted his responsibility for absconding from probation for a number of years.

On appeal, defendant says the trial court was deprived of jurisdiction over defendant's probation violation because the probation authorities failed to exercise due diligence in executing the attendant warrant.

The existence of jurisdiction is a question of law that this Court reviews de novo. *W A Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995). "It is a fundamental principle that defects in personal jurisdiction may be waived, whereas subject-matter jurisdiction may not be waived and may be raised at any time." *People v Richards*, 205 Mich App 438, 444; 517 NW2d 823 (1994). Defendant waived any objections to personal jurisdiction by appearing in court and striking a plea bargain. The question is whether the circuit court lacked subject-matter jurisdiction.

An undue delay in executing a warrant for probation violation constitutes waiver of the violation. *People v Ortman*, 209 Mich App 251, 254; 530 NW2d 161 (1995). The factors bearing on the question of due diligence include "the length of the delay, the reason for the delay, and the prejudice to the defendant." *Id.* at 255. A probationer's own responsibility for the delay militates against charging the authorities with a lack of due diligence. See *id.* at 256.

But, "as a general rule, . . . a plea of guilty waives all nonjurisdictional defects in the proceedings." *People v New*, 427 Mich 482, 488; 398 NW2d 358 (1986) (internal quotation marks and citation omitted). Accordingly, a defendant who has pleaded guilty "may raise on appeal only those defenses and rights which would preclude the state from obtaining a valid conviction against the defendant." *Id.* at 491. "[W]here the defense or right asserted by defendant relates solely to the capacity of the state to prove defendant's factual guilt, it is subsumed by defendant's guilty plea." *Id.* Defendant could, and did, waive the argument that plaintiff had forfeited the right to execute the warrant for his probation violation for lack of due diligence, but he could not waive objections to the circuit court's jurisdiction.

That the circuit court was the proper sentencing court in the first instance is not in dispute. "The probation statutes confer upon the sentencing court a broad range of discretionary power in handling all aspects of the probationary process." *People v Ritter*, 186 Mich App 701, 708; 464 NW2d 919 (1991), citing MCL 771.2(1) and 771.4. Accordingly, a sentencing court may revoke a defendant's probation on the basis of violations occurring within the probationary period. *Ritter, supra* at 710. If revocation proceedings are commenced during that period, the defendant remains subject to revocation even if the period expires while the matter is pending, provided only that the prosecutor acts with due diligence. *Id.* at 709-710. "[A] defendant's period of probation is tolled when he absconds from probationary supervision." *Id.* at 711.

Defendant concedes, "[w]ithout question," that he was "partly responsible for that expansive time period because he left Michigan in 1995." Even so, he protests that the record "reveals that few efforts were made to track Defendant down, even though Defendant had police contact outside of Michigan, and, had family, known by probation, to be living in Michigan." But defendant cites no authority for the proposition that, where a defendant has substantially made himself inaccessible to probation authorities, any allegation of a lack of due diligence on the latter's part can itself divest the circuit court of jurisdiction to revoke probation. We think it

obvious that a defendant who leaves the state or otherwise places himself beyond the normal reach of probation authorities thereby waives arguments predicated on the latter's lack of due diligence. See *Ortman, supra* at 256. Having extended his probationary period, and thus the circuit court's jurisdiction over the matter, by absconding, defendant's jurisdictional challenge predicated on a lack of plaintiff's due diligence must fail.

Defendant's silence on the question below, in the course of tendering a guilty plea, coupled with his own admissions that he was largely responsible for the interruption in his relations with probation authorities, constitute affirmative waiver of objections based on the factual assertion that plaintiff failed to exercise due diligence. See *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000); *New, supra*.

Affirmed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra